IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.76 OF 2006
IN
NOTICE OF MOTION NO. OF 2006
IN
L.C.SUIT NO.269 OF 2006
ALONG WITH
CIVIL APPLICATION (STAMP) NO.1856 OF 2006

Mukhtar Ahmed Enamal Haq Khan ...Appellant

Versus

Municipal Corporation of Gr.Mumbai ...Respondent

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Mr.A.R.Shaikh for Appellant.

Mrs.Joglekar for Respondent.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 1, 2006.

P.C.

1. Heard Counsel for the parties. Perused the documents placed on record. Admit. Mrs.Joglekar waives service for Respondent. By consent, Appeal is heard forthwith, as short question is involved.

2. This Appeal from Order takes exception to the order passed by the City Civil Court at Bombay dated 24th January 2006 in Notice of Motion No.Nil of 2006 in L.C.Suit No.269 of 2006. By this order, the Trial Court has refused to grant ad-interim relief as prayed during the pendency of the Notice of Motion on the ground that it is not possible to rely on the documents produced to show any indulgence to the Appellant.

3. In my opinion, as is rightly contended by the Counsel for the Appellant, the Trial Court has glossed over the case made out by the Appellant. In as much as, in respect of Suit structure, action was taken under Section 351 of the B.M.C. Act for the first time on 3rd April 1995. In the notice issued at that time, it was mentioned that unauthorised construction of the structure admeasuring 19’ x 9.9’ with B.M.walls and A.C. sheet roof was noticed. This notice mentions that the structure was ground floor structure. Reply to this notice was sent through Advocate on 5th April 1995. But no decision was taken by the appropriate

authority on the said reply. In fact, no steps whatsoever were taken by the Corporation on the basis of show cause notice dated 3rd April 1995. Thereafter, another show cause notice under Section 351 of the Act came to be issued on 27th October 1997. This time, however, the unauthorised construction was mentioned as 1st floor, admeasuring 21’ x 10’ and 14’ with ladi coba, ladi slab, B.M.walls, A.C.sheet roof. Once again, this notice was replied by the Advocate on 27th October 1997. However, no action was taken by the Corporation in response to the said reply. Now, fresh show cause notice under Section 351 of the Act has been issued on 30th June 2004 which is the subject matter of the Suit pending before the Trial Court. In this notice, however, the offending structure is described as construction of ground + mezzanine floor with brick walls, ladi coba and A.C.sheet roofing. Even this notice has been replied through Advocate but the explanation has not been accepted.

4. What is relevant to note is that in respect of the said structure namely ground floor

and now described as mezzanine floor which was earlier described as first floor, Notices were issued by the Corporation on 3rd April 1995 and 27th October 1997 respectively. Inspite of reply given by the Appellant through Advocate to this notice, no decision was taken by the Corporation. The Corporation owes explanation in this behalf, which position is not clearly stated in the decision taken by the appropriate authority. Suffice it to observe that some case has been made out by the Appellant. The Appellant was entitled for ad-interim relief till the Notice of Motion was to be disposed of one way or the other.

5. In the circumstances, while setting aside the impugned order and allowing this Appeal, the parties are directed to maintain status-quo with regard to the suit structure till the Notice of Motion is finally disposed of.

6. The Trial Court shall decide the Notice of Motion as expeditiously as possible, preferably by the end of June 2006. All questions are left open in the said Notice of Motion to be decided on its

own merits, uninfluenced by any of the observation made in this order. No order as to costs.

7. In view of the above order, cognate Civil Application also stands disposed of.

A.M.KHANWILKAR, J.